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INTERTRUST TECHNOLOGIES CORPORATION

11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 INTERTRUST TECHNOLOGIES
CORPORATION, a Delaware corporation,

16 Plaintiff,

17 v.

18 MICROSOFT CORPORATION, a
19 Washington corporation,

20 Defendant.

Case No. C 01-1640 SBA (MEJ)

Consolidated with C 02-0647 SBA

FOURTH AMENDED COMPLAINT FOR
INFRINGEMENT OF U.S. PATENT NOS.
6,185,683 B1; 6,253,193 B1; 5,920,861;
5,892,900; 5,982,891; 5,917,912; 6,157,721;
5,915,019; 5,949,876; 6,112,181; AND
6,389,402 B1.

DEMAND FOR JURY TRIAL

21 AND COUNTER ACTION.
22

23
24 Plaintiff INTERTRUST TECHNOLOGIES CORPORATION (hereafter "InterTrust")
25 hereby complains of Defendant MICROSOFT CORPORATION (hereafter "Microsoft"), and
26 alleges as follows:

27 JURISDICTION AND VENUE

28 1. This action for patent infringement arises under the patent laws of the United

1 States, Title 35, United States Code, more particularly 35 U.S.C. §§ 271 and 281.

2 2. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

3 3. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).

4 **THE PARTIES**

5 4. Plaintiff InterTrust is a Delaware corporation with its principal place of business
6 at 4750 Patrick Henry Drive, Santa Clara, California.

7 5. InterTrust is informed and believes, and on that basis alleges, that Defendant
8 Microsoft is a Washington Corporation with its principal place of business at One Microsoft
9 Way, Redmond, Washington.

10 6. InterTrust is informed and believes, and on that basis alleges, that Defendant
11 Microsoft does business in this judicial district and has committed and is continuing to commit
12 acts of infringement in this judicial district.

13 7. InterTrust is the owner of United States Patent No. 6,185,683 B1, entitled
14 "Trusted and secure techniques, systems and methods for item delivery and execution" ("the
15 '683 patent"), duly and lawfully issued on February 6, 2001.

16 8. InterTrust is the owner of United States Patent No. 6,253,193 B1, entitled
17 "Systems and methods for secure transaction management and electronic rights protection" ("the
18 '193 patent"), duly and lawfully issued on June 26, 2001.

19 9. InterTrust is the owner of United States Patent No. 5,920,861, entitled
20 "Techniques for defining, using and manipulating rights management data structures" ("the '861
21 patent"), duly and lawfully issued on July 6, 1999.

22 10. InterTrust is the owner of United States Patent No. 5,892,900, entitled "Systems
23 and methods for secure transaction management and electronic rights protection" ("the '900
24 patent"), duly and lawfully issued on April 6, 1999.

25 11. InterTrust is the owner of United States Patent No. 5,982,891, entitled "Systems
26 and methods for secure transaction management and electronic rights protection" ("the '891
27 patent"), duly and lawfully issued on November 9, 1999.

28 12. InterTrust is the owner of United States Patent No. 5,917,912 entitled "System

1 and methods for secure transaction management and electronic rights protection" ("the '912
2 patent"), duly and lawfully issued on June 29, 1999.

3 13. InterTrust is the owner of United States Patent No. 6,157,721, entitled "Systems
4 and methods using cryptography to protect secure computing environments" ("the '721 patent"),
5 duly and lawfully issued on December 5, 2000.

6 14. InterTrust is the owner of United States Patent No. 5,915,019, entitled "Systems
7 and methods for secure transaction management and electronic rights protection" (the '019
8 patent"), duly and lawfully issued on June 22, 1999.

9 15. InterTrust is the owner of United States Patent No. 5,949,876, entitled "Systems
10 and methods for secure transaction management and electronic rights protection" ("the '876
11 patent"), duly and lawfully issued on September 7, 1999.

12 16. InterTrust is the owner of United States Patent No. 6,112,181, entitled "Systems
13 and methods for matching, selecting, narrowcasting, and/or classifying based on rights
14 management and/or other information" ("the '181 patent"), duly and lawfully issued on August
15 29, 2000.

16 17. InterTrust is the owner of United States Patent No. 6,389,402 B1, entitled
17 "Systems and methods for secure transaction management and electronic rights protection" ("the
18 '402 patent"), duly and lawfully issued on May 14, 2002.

19 **FIRST CLAIM FOR RELIEF**

20 18. InterTrust hereby incorporates by reference paragraphs 1-7 as if restated herein.

21 19. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

22 20. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
23 been and is infringing the '683 patent under § 271(a), as identified in InterTrust's Patent Local
24 Rule 3-1 disclosures served on Microsoft on June 21, 2002. In addition, on information and
25 belief, InterTrust alleges that Microsoft is making and using other systems and/or is in the
26 process of developing other systems, which infringe the '683 patent under § 271(a). InterTrust is
27 further informed and believes, and on that basis alleges, that Microsoft's infringement of the
28 '683 patent under § 271(a) will continue unless enjoined by this Court.

21. InterTrust is informed and believes, and on that basis alleges, that Microsoft has been and is knowingly and intentionally inducing others to infringe directly the '683 patent under § 271(a), thereby inducing infringement of the '683 patent under § 271(b). InterTrust is further informed and believes that Microsoft's inducement has at least included the manner in which Microsoft has promoted and marketed use of its software and services identified in InterTrust's Patent Local Rule 3-1 disclosures served on Microsoft on June 21, 2002. InterTrust is further informed and believes, and on that basis alleges, that Microsoft's infringement of the '683 patent under § 271(b) will continue unless enjoined by this Court.

22. InterTrust is informed and believes, and on that basis alleges, that Microsoft has been and is contributorily infringing the '683 patent under § 271(c) by providing software and services especially made or especially adapted for infringing use and not staple articles or commodities of commerce suitable for substantial noninfringing use, including at least the software and services identified in InterTrust's Patent Local Rule 3-1 disclosures served on Microsoft on June 21, 2002.. InterTrust is further informed and believes, and on that basis alleges, that Microsoft's infringement of the '683 patent under § 271(c) will continue unless enjoined by this Court.

23. InterTrust is informed and believes, and on that basis alleges, that Microsoft is willfully infringing the '683 patent in the manner described above in paragraphs 20 through 22, and will continue to do so unless enjoined by this Court.

24. InterTrust is informed and believes, and on that basis alleges, that Microsoft has derived and received, and will continue to derive and receive from the aforesaid acts of infringement gains, profits, and advantages, tangible and intangible, the extent of which are not presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has been, and will continue to be, irreparably harmed.

SECOND CLAIM FOR RELIEF

25. InterTrust hereby incorporates by reference paragraphs 1-6 and 8 as if restated herein.

26. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

1 27. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
2 been and is infringing the '193 patent under § 271(a), as identified in InterTrust's Patent Local
3 Rule 3-1 disclosures served on Microsoft on June 21, 2002. In addition, on information and
4 belief, InterTrust alleges that Microsoft is making and using other systems and/or is in the
5 process of developing other systems, which infringe the '193 patent under § 271(a). InterTrust is
6 further informed and believes, and on that basis alleges, that Microsoft's infringement of the
7 '193 patent under § 271(a) will continue unless enjoined by this Court.

8 28. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
9 been and is knowingly and intentionally inducing others to infringe directly the '193 patent under
10 § 271(a), thereby inducing infringement of the '193 patent under § 271(b). InterTrust is further
11 informed and believes that Microsoft's inducement has at least included the manner in which
12 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
13 Patent Local Rule 3-1 disclosures served on Microsoft on June 21, 2002. InterTrust is further
14 informed and believes, and on that basis alleges, that Microsoft's infringement of the '193 patent
15 under § 271(b) will continue unless enjoined by this Court.

16 29. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
17 been and is contributorily infringing the '193 patent under § 271(c) by providing software and
18 services especially made or especially adapted for infringing use and not staple articles or
19 commodities of commerce suitable for substantial noninfringing use, including at least the
20 software and services identified in InterTrust's Patent Local Rule 3-1 disclosures served on
21 Microsoft on June 21, 2002.. InterTrust is further informed and believes, and on that basis
22 alleges, that Microsoft's infringement of the '193 patent under § 271(c) will continue unless
23 enjoined by this Court.

24 30. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
25 willfully infringing the '193 patent in the manner described above in paragraphs 27 through 29,
26 and will continue to do so unless enjoined by this Court.

27 31. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
28 derived and received, and will continue to derive and receive from the aforesaid acts of

1 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
2 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
3 been, and will continue to be, irreparably harmed.

4 **THIRD CLAIM FOR RELIEF**

5 32. InterTrust hereby incorporates by reference paragraphs 1-6 and 9 as if restated
6 herein.

7 33. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

8 34. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
9 been and is infringing the '861 patent under § 271(a), as identified in InterTrust's Patent Local
10 Rule 3-1 disclosures served on Microsoft on June 21, 2002. In addition, on information and
11 belief, InterTrust alleges that Microsoft is making and using other systems and/or is in the
12 process of developing other systems, which infringe the '861 patent under § 271(a). InterTrust is
13 further informed and believes, and on that basis alleges, that Microsoft's infringement of the
14 '861 patent under § 271(a) will continue unless enjoined by this Court.

15 35. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
16 been and is knowingly and intentionally inducing others to infringe directly the '861 patent under
17 § 271(a), thereby inducing infringement of the '861 patent under § 271(b). InterTrust is further
18 informed and believes that Microsoft's inducement has at least included the manner in which
19 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
20 Patent Local Rule 3-1 disclosures served on Microsoft on June 21, 2002. InterTrust is further
21 informed and believes, and on that basis alleges, that Microsoft's infringement of the '861 patent
22 under § 271(b) will continue unless enjoined by this Court.

23 36. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
24 been and is contributorily infringing the '861 patent under § 271(c) by providing software and
25 services especially made or especially adapted for infringing use and not staple articles or
26 commodities of commerce suitable for substantial noninfringing use, including at least the
27 software and services identified in InterTrust's Patent Local Rule 3-1 disclosures served on
28 Microsoft on June 21, 2002.. InterTrust is further informed and believes, and on that basis

1 alleges, that Microsoft's infringement of the '861 patent under § 271(c) will continue unless
2 enjoined by this Court.

3 37. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
4 willfully infringing the '861 patent in the manner described above in paragraphs 34 through 36,
5 and will continue to do so unless enjoined by this Court.

6 38. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
7 derived and received, and will continue to derive and receive from the aforesaid acts of
8 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
9 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
10 been, and will continue to be, irreparably harmed.

11 **FOURTH CLAIM FOR RELIEF**

12 39. InterTrust hereby incorporates by reference paragraphs 1-6 and 10 as if restated
13 herein.

14 40. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

15 41. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
16 been and is infringing the '900 patent under § 271(a), as identified in InterTrust's Patent Local
17 Rule 3-1 disclosures served on Microsoft on June 21, 2002. In addition, on information and
18 belief, InterTrust alleges that Microsoft is making and using other systems and/or is in the
19 process of developing other systems, which infringe the '900 patent under § 271(a). InterTrust is
20 further informed and believes, and on that basis alleges, that Microsoft's infringement of the
21 '900 patent under § 271(a) will continue unless enjoined by this Court.

22 42. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
23 been and is knowingly and intentionally inducing others to infringe directly the '900 patent under
24 § 271(i), thereby inducing infringement of the '900 patent under § 271(b). InterTrust is further
25 informed and believes that Microsoft's inducement has at least included the manner in which
26 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
27 Patent Local Rule 3-1 disclosures served on Microsoft on June 21, 2002. InterTrust is further
28 informed and believes, and on that basis alleges, that Microsoft's infringement of the '900 patent

1 under § 271(b) will continue unless enjoined by this Court.

2 43. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
3 been and is contributorily infringing the '900 patent under § 271(c) by providing software and
4 services especially made or especially adapted for infringing use and not staple articles or
5 commodities of commerce suitable for substantial noninfringing use, including at least the
6 software and services identified in InterTrust's Patent Local Rule 3-1 disclosures served on
7 Microsoft on June 21, 2002.. InterTrust is further informed and believes, and on that basis
8 alleges, that Microsoft's infringement of the '900 patent under § 271(c) will continue unless
9 enjoined by this Court.

10 44. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
11 willfully infringing the '900 patent in the manner described above in paragraphs 41 through 43,
12 and will continue to do so unless enjoined by this Court.

13 45. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
14 derived and received, and will continue to derive and receive from the aforesaid acts of
15 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
16 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
17 been, and will continue to be, irreparably harmed.

18 **FIFTH CLAIM FOR RELIEF**

19 46. InterTrust hereby incorporates by reference paragraphs 1-6 and 11 as if restated
20 herein.

21 47. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

22 48. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
23 been and is infringing the '891 patent under § 271(a), as identified in InterTrust's Patent Local
24 Rule 3-1 disclosures served on Microsoft on June 21, 2002. In addition, on information and
25 belief, InterTrust alleges that Microsoft is making and using other systems and/or is in the
26 process of developing other systems, which infringe the '891 patent under § 271(a). InterTrust is
27 further informed and believes, and on that basis alleges, that Microsoft's infringement of the
28 '891 patent under § 271(a) will continue unless enjoined by this Court.

1 49. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
2 been and is knowingly and intentionally inducing others to infringe directly the '891 patent under
3 § 271(a), thereby inducing infringement of the '891 patent under § 271(b). InterTrust is further
4 informed and believes that Microsoft's inducement has at least included the manner in which
5 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
6 Patent Local Rule 3-1 disclosures served on Microsoft on June 21, 2002. InterTrust is further
7 informed and believes, and on that basis alleges, that Microsoft's infringement of the '891 patent
8 under § 271(b) will continue unless enjoined by this Court.

9 50. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
10 been and is contributorily infringing the '891 patent under § 271(c) by providing software and
11 services especially made or especially adapted for infringing use and not staple articles or
12 commodities of commerce suitable for substantial noninfringing use, including at least the
13 software and services identified in InterTrust's Patent Local Rule 3-1 disclosures served on
14 Microsoft on June 21, 2002.. InterTrust is further informed and believes, and on that basis
15 alleges, that Microsoft's infringement of the '891 patent under § 271(c) will continue unless
16 enjoined by this Court.

17 51. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
18 willfully infringing the '891 patent in the manner described above in paragraphs 48 through 50,
19 and will continue to do so unless enjoined by this Court.

20 52. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
21 derived and received, and will continue to derive and receive from the aforesaid acts of
22 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
23 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
24 been, and will continue to be, irreparably harmed.

25 SIXTH CLAIM FOR RELIEF

26 53. InterTrust hereby incorporates by reference paragraphs 1-6 and 12 as if restated
27 herein.

28 54. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

1 55. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
2 been and is infringing the '912 patent under § 271(a), as identified in InterTrust's Patent Local
3 Rule 3-1 disclosures served on Microsoft on June 21, 2002. In addition, on information and
4 belief, InterTrust alleges that Microsoft is making and using other systems and/or is in the
5 process of developing other systems, which infringe the '912 patent under § 271(a). InterTrust is
6 further informed and believes, and on that basis alleges, that Microsoft's infringement of the
7 '912 patent under § 271(a) will continue unless enjoined by this Court.

8 56. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
9 been and is knowingly and intentionally inducing others to infringe directly the '912 patent under
10 § 271(a), thereby inducing infringement of the '912 patent under § 271(b). InterTrust is further
11 informed and believes that Microsoft's inducement has at least included the manner in which
12 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
13 Patent Local Rule 3-1 disclosures served on Microsoft on June 21, 2002. InterTrust is further
14 informed and believes, and on that basis alleges, that Microsoft's infringement of the '912 patent
15 under § 271(b) will continue unless enjoined by this Court.

16 57. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
17 been and is contributorily infringing the '912 patent under § 271(c) by providing software and
18 services especially made or especially adapted for infringing use and not staple articles or
19 commodities of commerce suitable for substantial noninfringing use, including at least the
20 software and services identified in InterTrust's Patent Local Rule 3-1 disclosures served on
21 Microsoft on June 21, 2002.. InterTrust is further informed and believes, and on that basis
22 alleges, that Microsoft's infringement of the '912 patent under § 271(c) will continue unless
23 enjoined by this Court.

24 58. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
25 willfully infringing the '912 patent in the manner described above in paragraphs 55 through 57,
26 and will continue to do so unless enjoined by this Court.

27 59. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
28 derived and received, and will continue to derive and receive from the aforesaid acts of

1 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
2 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
3 been, and will continue to be, irreparably harmed.

4 **SEVENTH CLAIM FOR RELIEF**

5 60. InterTrust hereby incorporates by reference paragraphs 1-6 and 13 as if restated
6 herein.

7 61. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

8 62. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
9 been and is infringing the '721 patent under § 271(a), as identified in InterTrust's Patent Local
10 Rule 3-1 disclosures served on Microsoft on June 21, 2002. In addition, on information and
11 belief, InterTrust alleges that Microsoft is making and using other systems and/or is in the
12 process of developing other systems, which infringe the '721 patent under § 271(a). InterTrust is
13 further informed and believes, and on that basis alleges, that Microsoft's infringement of the
14 '721 patent under § 271(a) will continue unless enjoined by this Court.

15 63. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
16 been and is knowingly and intentionally inducing others to infringe directly the '721 patent under
17 § 271(a), thereby inducing infringement of the '721 patent under § 271(b). InterTrust is further
18 informed and believes that Microsoft's inducement has at least included the manner in which
19 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
20 Patent Local Rule 3-1 disclosures served on Microsoft on June 21, 2002. InterTrust is further
21 informed and believes, and on that basis alleges, that Microsoft's infringement of the '721 patent
22 under § 271(b) will continue unless enjoined by this Court.

23 64. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
24 been and is contributorily infringing the '721 patent under § 271(c) by providing software and
25 services especially made or especially adapted for infringing use and not staple articles or
26 commodities of commerce suitable for substantial noninfringing use, including at least the
27 software and services identified in InterTrust's Patent Local Rule 3-1 disclosures served on
28 Microsoft on June 21, 2002.. InterTrust is further informed and believes, and on that basis

1 alleges, that Microsoft's infringement of the '721 patent under § 271(c) will continue unless
2 enjoined by this Court.

3 65. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
4 willfully infringing the '721 patent in the manner described above in paragraphs 62 through 64,
5 and will continue to do so unless enjoined by this Court.

6 66. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
7 derived and received, and will continue to derive and receive from the aforesaid acts of
8 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
9 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
10 been, and will continue to be, irreparably harmed.

11 **EIGHTH CLAIM FOR RELIEF**

12 67. InterTrust hereby incorporates by reference paragraphs 1-6 and 14 as if restated
13 herein.

14 68. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

15 69. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
16 been and is infringing the '019 patent under § 271(a), as identified in InterTrust's Draft Claim
17 Charts presented to Microsoft on June 21, 2002. In addition, on information and belief,
18 InterTrust alleges that Microsoft is making and using other systems and/or is in the process of
19 developing other systems, which infringe the '019 patent under § 271(a). InterTrust is further
20 informed and believes, and on that basis alleges, that Microsoft's infringement of the '019 patent
21 under § 271(a) will continue unless enjoined by this Court.

22 70. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
23 been and is knowingly and intentionally inducing others to infringe directly the '019 patent under
24 § 271(a), thereby inducing infringement of the '019 patent under § 271(b). InterTrust is further
25 informed and believes that Microsoft's inducement has at least included the manner in which
26 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
27 Draft Claim Charts presented to Microsoft on June 21, 2002. InterTrust is further informed and
28 believes, and on that basis alleges, that Microsoft's infringement of the '019 patent under §

1 271(b) will continue unless enjoined by this Court.

2 71. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
3 been and is contributorily infringing the '019 patent under § 271(c) by providing software and
4 services especially made or especially adapted for infringing use and not staple articles or
5 commodities of commerce suitable for substantial noninfringing use, including at least the
6 software and services identified in InterTrust's Draft Claim Charts presented to Microsoft on
7 June 21, 2002.. InterTrust is further informed and believes, and on that basis alleges, that
8 Microsoft's infringement of the '019 patent under § 271(c) will continue unless enjoined by this
9 Court.

10 72. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
11 willfully infringing the '019 patent in the manner described above in paragraphs 69 through 71,
12 and will continue to do so unless enjoined by this Court.

13 73. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
14 derived and received, and will continue to derive and receive from the aforesaid acts of
15 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
16 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
17 been, and will continue to be, irreparably harmed.

18 **NINTH CLAIM FOR RELIEF**

19 74. InterTrust hereby incorporates by reference paragraphs 1-6 and 15 as if restated
20 herein.

21 75. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

22 76. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
23 been and is infringing the '876 patent under § 271(a), as identified in InterTrust's Draft Claim
24 Charts presented to Microsoft on June 21, 2002. In addition, on information and belief,
25 InterTrust alleges that Microsoft is making and using other systems and/or is in the process of
26 developing other systems, which infringe the '876 patent under § 271(a). InterTrust is further
27 informed and believes, and on that basis alleges, that Microsoft's infringement of the '876 patent
28 under § 271(a) will continue unless enjoined by this Court.

1 77. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
2 been and is knowingly and intentionally inducing others to infringe directly the '876 patent under
3 § 271(a), thereby inducing infringement of the '876 patent under § 271(b). InterTrust is further
4 informed and believes that Microsoft's inducement has at least included the manner in which
5 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
6 Draft Claim Charts presented to Microsoft on June 21, 2002. InterTrust is further informed and
7 believes, and on that basis alleges, that Microsoft's infringement of the '876 patent under §
8 271(b) will continue unless enjoined by this Court.

9 78. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
10 been and is contributorily infringing the '876 patent under § 271(c) by providing software and
11 services especially made or especially adapted for infringing use and not staple articles or
12 commodities of commerce suitable for substantial noninfringing use, including at least the
13 software and services identified in InterTrust's Draft Claim Charts presented to Microsoft on
14 June 21, 2002. InterTrust is further informed and believes, and on that basis alleges, that
15 Microsoft's infringement of the '876 patent under § 271(c) will continue unless enjoined by this
16 Court.

17 79. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
18 willfully infringing the '876 patent in the manner described above in paragraphs 76 through 78,
19 and will continue to do so unless enjoined by this Court.

20 80. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
21 derived and received, and will continue to derive and receive from the aforesaid acts of
22 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
23 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
24 been, and will continue to be, irreparably harmed.

25 **TENTH CLAIM FOR RELIEF**

26 81. InterTrust hereby incorporates by reference paragraphs 1-6 and 16 as if restated
27 herein.

28 82. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

1 83. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
2 been and is infringing the '181 patent under § 271(a), as identified in InterTrust's Draft Claim
3 Charts presented to Microsoft on June 21, 2002. In addition, on information and belief,
4 InterTrust alleges that Microsoft is making and using other systems and/or is in the process of
5 developing other systems, which infringe the '181 patent under § 271(a). InterTrust is further
6 informed and believes, and on that basis alleges, that Microsoft's infringement of the '181 patent
7 under § 271(a) will continue unless enjoined by this Court.

8 84. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
9 been and is knowingly and intentionally inducing others to infringe directly the '181 patent under
10 § 271(a), thereby inducing infringement of the '181 patent under § 271(b). InterTrust is further
11 informed and believes that Microsoft's inducement has at least included the manner in which
12 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
13 Draft Claim Charts presented to Microsoft on June 21, 2002. InterTrust is further informed and
14 believes, and on that basis alleges, that Microsoft's infringement of the '181 patent under §
15 271(b) will continue unless enjoined by this Court.

16 85. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
17 been and is contributorily infringing the '181 patent under § 271(c) by providing software and
18 services especially made or especially adapted for infringing use and not staple articles or
19 commodities of commerce suitable for substantial noninfringing use, including at least the
20 software and services identified in InterTrust's Draft Claim Charts presented to Microsoft on
21 June 21, 2002. InterTrust is further informed and believes, and on that basis alleges, that
22 Microsoft's infringement of the '181 patent under § 271(c) will continue unless enjoined by this
23 Court.

24 86. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
25 willfully infringing the '181 patent in the manner described above in paragraphs 83 through 85,
26 and will continue to do so unless enjoined by this Court.

27 87. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
28 derived and received, and will continue to derive and receive from the aforesaid acts of

1 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
2 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
3 been, and will continue to be, irreparably harmed.

4 **ELEVENTH CLAIM FOR RELIEF**

5 88. InterTrust hereby incorporates by reference paragraphs 1-6 and 17 as if restated
6 herein.

7 89. This is a claim for patent infringement under 35 U.S.C. §§ 271 and 281.

8 90. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
9 been and is infringing the '402 patent under § 271(a), as identified in InterTrust's Draft Claim
10 Charts presented to Microsoft on June 21, 2002. In addition, on information and belief,
11 InterTrust alleges that Microsoft is making and using other systems and/or is in the process of
12 developing other systems, which infringe the '402 patent under § 271(a). InterTrust is further
13 informed and believes, and on that basis alleges, that Microsoft's infringement of the '402 patent
14 under § 271(a) will continue unless enjoined by this Court.

15 91. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
16 been and is knowingly and intentionally inducing others to infringe directly the '402 patent under
17 § 271(a), thereby inducing infringement of the '402 patent under § 271(b). InterTrust is further
18 informed and believes that Microsoft's inducement has at least included the manner in which
19 Microsoft has promoted and marketed use of its software and services identified in InterTrust's
20 Draft Claim Charts presented to Microsoft on June 21, 2002. InterTrust is further informed and
21 believes, and on that basis alleges, that Microsoft's infringement of the '402 patent under §
22 271(b) will continue unless enjoined by this Court.

23 92. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
24 been and is contributorily infringing the '402 patent under § 271(c) by providing software and
25 services especially made or especially adapted for infringing use and not staple articles or
26 commodities of commerce suitable for substantial noninfringing use, including at least the
27 software and services identified in InterTrust's Draft Claim Charts presented to Microsoft on
28 June 21, 2002. InterTrust is further informed and believes, and on that basis alleges, that

1 Microsoft's infringement of the '402 patent under § 271(c) will continue unless enjoined by this
2 Court.

3 93. InterTrust is informed and believes, and on that basis alleges, that Microsoft is
4 willfully infringing the '402 patent in the manner described above in paragraphs 90 through 92,
5 and will continue to do so unless enjoined by this Court.

6 94. InterTrust is informed and believes, and on that basis alleges, that Microsoft has
7 derived and received, and will continue to derive and receive from the aforesaid acts of
8 infringement gains, profits, and advantages, tangible and intangible, the extent of which are not
9 presently known to InterTrust. By reason of the aforesaid acts of infringement, InterTrust has
10 been, and will continue to be, irreparably harmed.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, InterTrust prays for relief as follows:

13 A. That Microsoft be adjudged to have infringed the '683 patent under 35 U.S.C. §
14 271(a);

15 B. That Microsoft be adjudged to have infringed the '683 patent under 35 U.S.C. §
16 271(b) by inducing others to infringe directly the '683 patent under 35 U.S.C. § 271(a);

17 C. That Microsoft be adjudged to have contributorily infringed the '683 patent under
18 35 U.S.C. § 271(c);

19 D. That Microsoft be adjudged to have willfully infringed the '683 patent under 35
20 U.S.C. §§ 271(a), (b), and (c);

21 E. That Microsoft, its officers, agents, servants, employees and attorneys, and those
22 persons in active concert or participation with them be preliminarily and permanently restrained
23 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '683 patent;

24 F. That Microsoft be adjudged to have infringed the '193 patent under 35 U.S.C. §
25 271(a);

26 G. That Microsoft be adjudged to have infringed the '193 patent under 35 U.S.C. §
27 271(b) by inducing others to infringe directly the '193 patent under 35 U.S.C. § 271(a);

28 ///

1 H. That Microsoft be adjudged to have contributorily infringed the '193 patent under
2 35 U.S.C. § 271(c);

3 I. That Microsoft be adjudged to have willfully infringed the '193 patent under 35
4 U.S.C. §§ 271(a), (b), and (c);

5 J. That Microsoft, its officers, agents, servants, employees and attorneys, and those
6 persons in active concert or participation with them be preliminarily and permanently restrained
7 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '193 patent;

8 K. That Microsoft be adjudged to have infringed the '861 patent under 35 U.S.C. §
9 271(a);

10 L. That Microsoft be adjudged to have infringed the '861 patent under 35 U.S.C. §
11 271(b) by inducing others to infringe directly the '861 patent under 35 U.S.C. § 271(a);

12 M. That Microsoft be adjudged to have contributorily infringed the '861 patent under
13 35 U.S.C. § 271(c);

14 N. That Microsoft be adjudged to have willfully infringed the '861 patent under 35
15 U.S.C. §§ 271(a), (b), and (c);

16 O. That Microsoft, its officers, agents, servants, employees and attorneys, and those
17 persons in active concert or participation with them be preliminarily and permanently restrained
18 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '861 patent;

19 P. That Microsoft be adjudged to have infringed the '900 patent under 35 U.S.C. §
20 271(a);

21 Q. That Microsoft be adjudged to have infringed the '900 patent under 35 U.S.C. §
22 271(b) by inducing others to infringe directly the '900 patent under 35 U.S.C. § 271(a);

23 R. That Microsoft be adjudged to have contributorily infringed the '900 patent under
24 35 U.S.C. § 271(c);

25 S. That Microsoft be adjudged to have willfully infringed the '900 patent under 35
26 U.S.C. §§ 271(a), (b), and (c);

27 T. That Microsoft, its officers, agents, servants, employees and attorneys, and those
28 persons in active concert or participation with them be preliminarily and permanently restrained

1 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '900 patent;

2 U. That Microsoft be adjudged to have infringed the '891 patent under 35 U.S.C. §
3 271(a);

4 V. That Microsoft be adjudged to have infringed the '891 patent under 35 U.S.C. §
5 271(b) by inducing others to infringe directly the '891 patent under 35 U.S.C. § 271(a);

6 W. That Microsoft be adjudged to have contributorily infringed the '891 patent under
7 35 U.S.C. § 271(c);

8 X. That Microsoft be adjudged to have willfully infringed the '891 patent under 35
9 U.S.C. §§ 271(a), (b), and (c);

10 Y. That Microsoft, its officers, agents, servants, employees and attorneys, and those
11 persons in active concert or participation with them be preliminarily and permanently restrained
12 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '891 patent;

13 Z. That Microsoft be adjudged to have infringed the '912 patent under 35 U.S.C. §
14 271(a);

15 AA. That Microsoft be adjudged to have infringed the '912 patent under 35 U.S.C. §
16 271(b) by inducing others to infringe directly the '912 patent under 35 U.S.C. § 271(a);

17 BB. That Microsoft be adjudged to have contributorily infringed the '912 patent under
18 35 U.S.C. § 271(c);

19 CC. That Microsoft be adjudged to have willfully infringed the '912 patent under 35
20 U.S.C. §§ 271(a), (b), and (c);

21 DD. That Microsoft, its officers, agents, servants, employees and attorneys, and those
22 persons in active concert or participation with them be preliminarily and permanently restrained
23 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '912 patent;

24 EE. That Microsoft be adjudged to have infringed the '721 patent under 35 U.S.C. §
25 271(a);

26 FF. That Microsoft be adjudged to have infringed the '721 patent under 35 U.S.C. §
27 271(b) by inducing others to infringe directly the '721 patent under 35 U.S.C. § 271(a);

28 ///

1 GG. That Microsoft be adjudged to have contributorily infringed the '721 patent under
2 35 U.S.C. § 271(c);

3 HH. That Microsoft be adjudged to have willfully infringed the '721 patent under 35
4 U.S.C. §§ 271(a), (b), and (c);

5 II. That Microsoft, its officers, agents, servants, employees and attorneys, and those
6 persons in active concert or participation with them be preliminarily and permanently restrained
7 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '721 patent;

8 JJ. That Microsoft be adjudged to have infringed the '019 patent under 35 U.S.C. §
9 271(a);

10 KK. That Microsoft be adjudged to have infringed the '019 patent under 35 U.S.C. §
11 271(b) by inducing others to infringe directly the '019 patent under 35 U.S.C. § 271(a);

12 LL. That Microsoft be adjudged to have contributorily infringed the '019 patent under
13 35 U.S.C. § 271(c);

14 MM. That Microsoft be adjudged to have willfully infringed the '019 patent under 35
15 U.S.C. §§ 271(a), (b), and (c);

16 NN. That Microsoft, its officers, agents, servants, employees and attorneys, and those
17 persons in active concert or participation with them be preliminarily and permanently restrained
18 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '019 patent;

19 OO. That Microsoft be adjudged to have infringed the '876 patent under 35 U.S.C. §
20 271(a);

21 PP. That Microsoft be adjudged to have infringed the '876 patent under 35 U.S.C. §
22 271(b) by inducing others to infringe directly the '876 patent under 35 U.S.C. § 271(a);

23 QQ. That Microsoft be adjudged to have contributorily infringed the '876 patent under
24 35 U.S.C. § 271(c);

25 RR. That Microsoft be adjudged to have willfully infringed the '876 patent under 35
26 U.S.C. §§ 271(a), (b), and (c);

27 ///

28 ///

1 SS. That Microsoft, its officers, agents, servants, employees and attorneys, and those
2 persons in active concert or participation with them be preliminarily and permanently restrained
3 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '876 patent;

4 TT. That Microsoft be adjudged to have infringed the '181 patent under 35 U.S.C. §
5 271(a);

6 UU. That Microsoft be adjudged to have infringed the '181 patent under 35 U.S.C. §
7 271(b) by inducing others to infringe directly the '181 patent under 35 U.S.C. § 271(a);

8 VV. That Microsoft be adjudged to have contributorily infringed the '181 patent under
9 35 U.S.C. § 271(c);

10 WW. That Microsoft be adjudged to have willfully infringed the '181 patent under 35
11 U.S.C. §§ 271(a), (b), and (c);

12 XX. That Microsoft, its officers, agents, servants, employees and attorneys, and those
13 persons in active concert or participation with them be preliminarily and permanently restrained
14 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '181 patent;

15 YY. That Microsoft be adjudged to have infringed the '402 patent under 35 U.S.C. §
16 271(a);

17 ZZ. That Microsoft be adjudged to have infringed the '402 patent under 35 U.S.C. §
18 271(b) by inducing others to infringe directly the '402 patent under 35 U.S.C. § 271(a);

19 AAA. That Microsoft be adjudged to have contributorily infringed the '402 patent under
20 35 U.S.C. § 271(c);

21 BBB. That Microsoft be adjudged to have willfully infringed the '402 patent under 35
22 U.S.C. §§ 271(a), (b), and (c);

23 CCC. That Microsoft, its officers, agents, servants, employees and attorneys, and those
24 persons in active concert or participation with them be preliminarily and permanently restrained
25 and enjoined under 35 U.S.C. § 283 from directly or indirectly infringing the '402 patent;

26 DDD. That this Court award damages to compensate InterTrust for Microsoft's
27 infringement, as well as enhanced damages, pursuant to 35 U.S.C. § 284;

28 ///

1 PROOF OF SERVICE

2 I am employed in the City and County of San Francisco, State of California in the office of a
3 member of the bar of this court at whose direction the following service was made. I am over the
4 age of eighteen years and not a party to the within action. My business address is Keker & Van
Nest, LLP, 710 Sansome Street, San Francisco, California 94111.

5 On October 24, 2002, I served the following document(s):

6 **FOURTH AMENDED COMPLAINT FOR INFRINGEMENT OF U.S. PATENT NOS.**
7 **6,185,683 B1; 6,253,193 B1; 5,920,861; 5,892,900; 5,982,891; 5,917,912; 6,157,721;**
8 **5,915,019; 5,949,876; 6,112,181; AND 6,389,402 B1**

9 DEMAND FOR JURY TRIAL

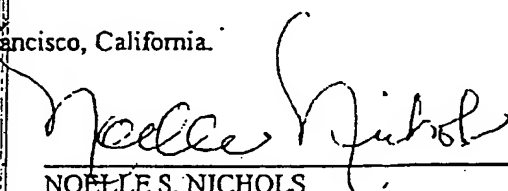
10 ☒ by FACSIMILE TRANSMISSION (IKON) AND UNITED STATES MAIL, by placing a true and
11 correct copy with IKON Office Solutions, the firm's in-house facsimile transmission center provider, for
12 transmission on this date. The transmission was reported as complete and without error. A true and correct
13 copy of same was placed in a sealed envelope addressed as shown below. I am readily familiar with the
14 practice of Keker & Van Nest, LLP for collection and processing of correspondence for mailing.
According to that practice, items are deposited with the United States Postal Service at San Francisco,
California on that same day with postage thereon fully prepaid. I am aware that, on motion of the party
served, service is presumed invalid if the postal cancellation date or the postage meter date is more than one
day after the date of deposit for mailing stated in this affidavit.

15 Eric L. Wesenberg, Esq.
16 Mark R. Weinstein, Esq.
17 Orrick Herrington & Sutcliffe
18 1000 Marsh Road
Menlo Park, CA 94025
Telephone: 650/614-7400
Facsimile: 650/614-7401

John D. Vandenberg, Esq.
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One World Trade Center, Suite 1600
121 S.W. Salmon Street
Portland OR 97204
Telephone: 503/226-7391
Facsimile: 503/228-9446

20 I declare under penalty of perjury under the laws of the State of California that the above is true
21 and correct.

22 Executed on October 24, 2002, at San Francisco, California.

23 
24 NOELLE S. NICHOLS
25
26
27
28

1 PROOF OF SERVICE

CASE NO. C 01-1640 SBA (XJ), CONSOLIDATED WITH C 02-0647 SBA

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